

DEFINITIONS

Contract

The legal instrument reflecting a relationship between the NOS and a business, organization or individual whenever: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, or (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract. A contract may also refer to the legal instrument reflecting a relationship between a recipient and contractor or between such contractor and subcontractor.

Cooperative Agreement

The legal instrument reflecting a relationship between the NOS and a recipient (individual or entity) whenever: (a) the principal purpose of the relationship is to provide financial assistance to the recipient and (b) substantial involvement is anticipated between NOS and the recipient during performance of the contemplated activity. Financial assistance is the transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation which is authorized by Federal statute. Cooperative Agreements are subject to the same Office of Management and Budget (OMB), Treasury, and other Federal directives as grants. DAO 203-26, Department of Commerce Grants Administration, prescribes policies for the award and general administration of Department of Commerce grants and cooperative agreements.

Economy Act, 31 U.S.C. ' 1535

Relevant portions of the Act are as follows:

The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if--

(1) amounts are available; (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government; (3) the agency or unit to fill the order is able to provide the ordered goods or services; and (4) the head of the agency decides ordered goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.

Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided. An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in-- (1) providing goods or services; or (2) making an authorized contract with another person to provide the requested goods or services.

Grants

The same definition as Cooperative Agreement; however, there is no substantial involvement anticipated between NOS and the recipient during performance of the contemplated activity.

Interagency Agreements

A written document containing specific provisions of governing authorities, responsibilities, and funding entered into between NOS and a reimbursing sponsor or between another organization and NOS when NOS is the sponsor. Such an agreement must be in existence prior to initiation of reimbursable work by NOS and must cite the applicable legal authorities for entering into the agreement, whether the funding is coming into NOS or going out. Depending on the project or service, various NOS programmatic authorities permit these agreements as well as other authorities such as the Economy Act, 31 U.S.C. 1535, the Joint Project Authority, 15 U.S.C. 1525, and the Intergovernmental Cooperation Act, 31 U.S.C. 6505. A Model Interagency Agreement containing both mandatory and optional provisions is included in Chapter 2 of the NOAA Budget Handbook. This format may be used for both Federal and non-Federal organizations. It contains both mandatory and optional provisions.

Incoming Funds (Reimbursables)

Reimbursable work may be accepted only if it can be performed without adversely affecting regular NOS programs and if : (1) the services would not be considered to be in competition with private enterprise because of NOS's unique expertise; (2) the work cannot be performed economically by the requesting agency with its own facilities or by government-wide service agencies; (3) performance by NOS is consistent with NOS programs and will serve the public interest; (4) the results of the work will not cause controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity; and (5) no exclusive proprietary interest would accrue to the other party.

The most common authority used for reimbursable work between Federal agencies is the Economy Act of 1932, as amended. All payments for work or services performed are to be deposited to the appropriation or fund against which the charges have been made. Furthermore, the act requires that a proper cost adjustment of amounts paid in advance be made on the basis of the actual cost of goods or services provided. (See **DEFINITIONS**, Attachment 1, Page 1, for the four necessary conditions that must be met and documented in the file prior to executing each Economy Act transaction.)

Joint Project Agreements (Incoming Funds and Equitably Shared)

The Secretary of Commerce has specific authority under 15 U.S.C. 1525 to engage in joint projects or perform services on matters of mutual interest for nonprofit organizations, research organizations, or public organizations and agencies. Joint project agreements are entered into if:

- (1) the project is essential to the furtherance of NOS programs;
- (2) the project is of mutual interest and cannot be done effectively without the participation of the partner organization and NOS, and;
- (3) the cost of the project is apportioned equitably, unless a waiver of any portion of the costs has been approved by the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce. (See **Waivers** Definition - Authority for approval has been redelegated to the heads of operating units within the Department)

Such agreements require both the NOS and the partner organization to contribute resources on an equitable basis when they engage in projects or perform services on matters of mutual interest. The budget for the project or the service must include separate breakouts of costs contributed by NOS and the partner organization to demonstrate equitability in the conduct of the joint project. All payments for work or services performed are to be deposited to the appropriation or fund against which the charges have been made.

Outgoing Funds

Transfers of funds to other agencies is appropriate when:

- (1) the work would not be considered to be in competition with private enterprise because of the other agency's unique expertise;
- (2) specific legal authority exists to justify the transfer of funds as an appropriate undertaking;

(3) the results of the work will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity;

(4) no exclusive proprietary interest would accrue to the other party; and (5) the transfer is in the best interests of the Federal Government.

If the funds are to support a contract, cooperative agreement or grant, the transfer should include the agreement number, if known.

Memorandum of Agreement/Understanding (MOA/U)

In furthering its programs, NOS becomes involved on a continuing basis with a large number of international, Federal, state, and local agencies, universities, and other public and private institutions. These relationships are encouraged and frequently require or are aided by proper documentation. The use of the MOA/U, as set forth in NOA 201-105, is appropriate whenever: (1) the transaction does not involve funding; (2) undertakings are assumed by both parties; (3) an official documentation of these undertakings is required or may be of interest to third parties such as the Congress, state legislatures, or university trustees; and (4) the undertakings are expected to continue over an extended period of time, although typically they can be terminated by either party on relatively short notice. NOA 201-105 provides guidance on drafting a MOA/U along with a sample agreement. Each must cite a statutory and/or regulatory authorities authorizing the objectives of the agreement.

Overhead Rate

The NOAA Office of Finance and Administration determines overhead rates for NOS Headquarters and NOS field offices based on cost experience from prior years. These rates are updated periodically and provided to the Financial Management Centers by the NOS Budget Office. These rates must be used and applied to direct costs when developing budgets for reimbursable work in order to recover the total costs of tasks NOS undertakes for other organizations.

Overhead represents indirect costs or expenses of an agency which cannot be charged as belonging exclusively to any particular part of the project or service being performed by NOS personnel (rent, lighting, heating, accounting, other office expenses and depreciation).

Total Cost Recovery

The NOS is required to recover full costs for reimbursable work and to ensure an equitable apportionment for joint projects in relation to the benefits received. Direct labor must be recorded in accordance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996 by the Office of Finance and Administration for such projects. Supplies, travel and other expenses directly related to the work must be recovered as well as the applicable overhead rate for the NOS activity.

User Fees

User fees are to be charged by an agency when it conveys special benefits to individuals or organizations beyond those occurring to the general public. The fees are to be collected in advance or simultaneously with the rendering of services, unless appropriations and authority are provided in advance to allow reimbursable services. Absent statutory authority to the contrary, user fees collected by NOS must be deposited into the Treasury. Guidance on user fees is provided in OMB Circular A-25, User Fees, the Accounting Handbook, Chapters 17 and 18 and the NOAA Finance Handbook, Chapter 9, Fees for Special Products and Services.

Waivers

Advance Payments

Chapter 2, NOAA Budget Handbook, provides guidance on waiving advance payments for both Federal and non-Federal sponsored work. Although advances are considered the primary method of payment, the head of the program office responsible for performing the reimbursable work may determine, on a case by case basis, that an advance payment is not feasible.

Work performed for non-Federal sponsors without an advance payment requires the head of the program office responsible for performing the work to justify the action and request, in writing, a waiver of the advance payment policy from the Chief, Financial Officer/Chief Administrative Officer, prior to accepting the reimbursable work.

Elements of Distributed Costs

Chapter 2, NOAA Budget Handbook, provides guidance on requesting waivers of any costs associated with reimbursable work. No waivers of any elements of distributed costs will be made without prior approval of the Chief, Financial Officer/Chief Administrative Officer. Distributed costs are defined in the Handbook and include such items as NOAA overhead, depreciation and GSA rent. Requests must be fully justified in writing prior to negotiating the agreement and include the amount requested to be waived. Each must also contain a direct task number to which the waived costs will be charged. Sample waiver request formats are provided in Appendix N of the Handbook.

Joint Project Agreement Costs

The Department Organization Order 10-5, prescribes the authority and functions of the Chief Financial Officer and Assistant Secretary for Administration. That order delegates to the Chief Financial Officer and Assistant Secretary for Administration the responsibilities of the Secretary of Commerce regarding special studies, reports, technical information, and other related functions under 15 U.S.C. 1525-1527 (Public Law (P.L.)). This includes approval of waivers of costs under joint project agreements authorized by 15 U.S.C. 1525. That authority has been redelegated to the heads of operating units within the Department (Chapter 18, Sections 6.05 and 6.06, Department of Commerce Accounting Principles and Standards Handbook). The responsible NOS field or Headquarters manager will prepare a justification for the cost which the non-profit organization, research organization or public organization or agency should not be required to pay. The request must be forwarded through the Assistant Administrator for National Ocean Service to the Chief Financial Officer/Chief Administrative Officer, NOAA, who will advise the Under Secretary for Oceans and Atmosphere or designee on determining the appropriate portion of the project's costs to be waived. Each waiver of cost must be obtained in advance of signing any agreement to undertake the joint project and in advance of beginning any work for the project.

Factors for Waiver of Costs

Each of the following factors may be a basis for waiver: (a) the organization is financially unable to pay its full apportioned cost; (b) the recovery of full cost is in conflict with statutory requirements or would seriously impair the objectives of the program or public policy; (c) the cost of collecting the fees would be an unduly large part of the receipts of the activity; (d) the furnishing of the service without charge is an appropriate or reciprocal courtesy to a foreign country or international organization or is in accordance with an international agreement to which the United States has subscribed; (e) comparable fees are set on a reciprocal basis with a foreign country; (f) the recipient is engaged in a non-profit activity designed for the public safety, health, or welfare; (g) payment of the full cost by a Federal agency, State or local government, or non-profit group would not be in the interest of the program; and (h) the furnishing of information to a recipient is clearly a reasonable exchange of information with a voluntary contributor of information to a Department program.

